

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-cv-00412-M-RN

MARY KATHERINE BIR,)
)
Plaintiff,)
)
v.)
)
McKESSON CORPORATION and)
McKESSON MEDICAL SURGICAL)
INCORPORATED)
)
Defendants.)
_____)

**DEFENDANTS' PARTIAL MOTION TO DISMISS PLAINTIFF'S
COMPLAINT AND MOTION TO STRIKE**

Defendants McKesson Corporation and McKesson Medical-Surgical Inc. (collectively, "Defendants"),¹ by and through their undersigned counsel, move this Court to dismiss Count III (Title VII – Retaliation) of Plaintiff Mary Katherine Bir's Complaint [ECF No. 1] under Rule 12(b)(6) of the Federal Rules of Civil Procedure.² The grounds for this motion are that Plaintiff

¹ At all times relevant to the material allegations of Plaintiff's Complaint, *McKesson Medical-Surgical Inc.* employed Plaintiff. Defense counsel will accept service of an amended summons and pleading reflecting Defendant McKesson Medical-Surgical Inc. as the proper party defendant.

² The great weight of authority interpreting the Rules of Civil Procedure holds that a partial motion to dismiss stays the time for filing an Answer. Otherwise, Defendants would be put to the cost of answering twice and confusion would be created. *See, e.g., FDIC v. Heidrick*, 812 F. Supp. 586, 591 (D. Md. 1991), *aff'd*, 995 F.2d 471 (4th Cir. 1996); *Harrington v. Sprint Nextel Corp.*, No. 08-336, 2008 WL 2228524, at *5 (E.D. Va. May 29, 2008); *Godlewski v. Affiliated Computer Svcs.*, 210 F.R.D. 571, 572 (E.D. Va. 2002). Under the overwhelming interpretation of Rule 12, because Defendants have moved to dismiss Plaintiffs' Complaint in part, they are not required to file an Answer until the time set forth in Rule 12(a)(1)(a). Nevertheless, out of an abundance of caution and to the extent the Court deems it necessary, Defendants respectfully request that the Court treat this as a motion for extension of time to file an Answer until the time set forth in Rule 12(a)(1)(a) and/or, in the alternative, as a denial of liability regarding all claims contained in the Complaint.

failed to exhaust her administrative remedies with respect to her Title VII retaliation claim. Accordingly, this court lacks jurisdiction and she has failed to state a claim upon which relief can be granted.

Additionally, under Rule 12(f) of the Federal Rules of Civil Procedure, Defendants move to strike the Declaration of Donn Keoki Arizumi and Paragraphs 16 and 86 (which discuss its contents), as well as the documents and materials referenced in footnotes 2, 4, 15-34, and 36-37 (inserted as hyperlinked materials from the internet), as well as Paragraphs 6, 16, 51-53, 56, 58-60, 62-66, 71, and 86 from Plaintiff's Complaint. The grounds for this motion are that these documents and materials contain immaterial, impertinent, and scandalous matter, which have no bearing upon the subject matter of the litigation, do not pertain, and are not necessary, to the legal issues in this case, and are prejudicial to Defendants.

Defendants contemporaneously file their memorandum in support of this motion.

WHEREFORE, Defendants McKesson Corporation and McKesson Medical-Surgical Inc. respectfully request that this Court issue its order (1) dismissing Count III of Plaintiff's Complaint; (2) striking the Declaration of Donn Keoki Arizumi and Paragraphs 16 and 86 from Plaintiff's Complaint; (3) and striking the documents and materials referenced in footnotes 2, 4, 15-34, and 36-37, as well as Paragraphs 6, 16, 51-53, 56, 58-60, 62-66, 71, and 86 from Plaintiff's Complaint.

Respectfully submitted this the 13th day of December, 2022.

OGLETREE, DEAKINS, NASH,
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/s/ Michael D. McKnight

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**Motion for Special Appearance forthcoming*

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing **PARTIAL MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND MOTION TO STRIKE** was electronically filed with the Clerk of Court using the CM/ECF system which will send a copy of the same to:

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Respectfully submitted this 13th day of December, 2022.

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